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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1969

No. 576

JOHN J. FAHEY,
Petitioner,
vs.
UNITED STATES OF AMERICA,
Respondent.

PETITIONER'S REPLY BRIEF

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This reply brief is written because, in our opinion, the brief of the United States creates a misleading picture of the factual background of this case.

Petitioner's position at the trial was not that the failure to file was due to "procrastination". Far from taking care of his taxes "after the stimulation from the visit of Internal Revenue", petitioner continued to fail to file his tax returns despite the certain knowledge that this conduct would subject him, as it did, to stringent criminal penalties. The psychiatrist testified, without contradiction, and the District Court apparently accepted, since it found petitioner had no intent to defraud, that his conduct was caused by an "urge to self-destruction", and that his failure to file tax returns was "substantially beyond his control".

The United States, in claiming there are no conflicts in the circuits in this matter, takes a position contrary to both the District Judge who tried the case and the Court of Appeals for the Ninth Circuit which recognized and stated in its Opinions that such a conflict existed. In attempting to remove this case from the application of the *Murdock* standard, the United States is simply guessing as to what was in the District Court's mind when it applied the standard to the facts of the case and found wilfulness despite no intention to defraud. We believe the Government misinterprets the findings in this case where it does not ignore them and submit to this Court its own findings. In any event, this kind of guessing game has, as its price, a man's liberty. This Court has indicated in *Bollenbach v. United States,* 326 U.S. 607, that interpreting a judge's or jury's decision to support the verdict where an incorrect standard is applied is not constitutionally allowed.

The state of the law following this decision where the Ninth Circuit has found a mere intentional failure to file is sufficient to convict is confused and ambiguous. Judges and lawyers throughout the country should not be required to engage in the same kind of guessing game concerning the facts of their cases as the United States has so obviously done with respect to this case.

Dated, October 24, 1969.

Respectfully submitted,

RICHARD H. FOSTER,

Counsel for Petitioner.